

EXECUTIVE OFFICER SUMMARY REPORT
June 8, 2005

ITEM: 9

SUBJECT: Settlement of Liability Against Fieldstone Communities, Inc. and Florida Southchase, L.P. for Violation of Water Code Section 13376 and SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, Morro Hills, Oceanside, San Diego County. The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability (ACL) Complaint Nos. R9-2005-0107 and 0108. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Resolution No. R9-2005-0166) (Frank Melbourne)

PURPOSE: The Regional Board will consider acceptance of an offer to settle liability by adopting tentative Order No. R9-2003-0166 (Document No. 2).

PUBLIC NOTICE: A 30-day public comment period on the proposed settlement of ACL Complaint Nos. R9-2005-0107 and 0108 was published in the North County Times on May 1, 2005 (Document No. 3). The notice was also included in the Notifications section of the May Regional Board Agenda, and was published on the Regional Board's Web Page on April 28, 2005.

DISCUSSION: On March 17, 2005, the Executive Officer issued ACL Complaints to Fieldstone Communities, Inc. (hereinafter Fieldstone, No. R9-2005-0107, \$262,500, Document No. 4) and to Florida Southchase, L.P. (hereinafter Southchase, No. R9-2005-0108, \$242,500, Document No. 5).

The Complaints alleged the following violations:

1. Failure to prohibit discharges (six days for Fieldstone and four days for Southchase) of sediment directly or indirectly via the City of Oceanside's Municipal Separate Storm Sewer System (MS4) into Pilgrim Creek, a tributary to the San Luis Rey River; and
2. Failure to implement a Storm Water Pollution Prevention Plan (SWPPP) by failing to implement and/or maintain Best Management Practices (BMPs) for 135 days.

The Regional Board met with the Fieldstone and Southchase (collectively referred to as Dischargers) to discuss the allegations of the ACL Complaints on April 11, 2005. On April 26, 2005, the Regional Board received a settlement offer from the Dischargers (Document No. 6). The crux of the Dischargers reasoning supporting its settlement offer is that the Morro Hills development is a joint venture of the two Dischargers, and their actions and activities are so intertwined that the entities should be considered as one. Furthermore given the site's physical characteristics, discharges from one would commingle with the other making it nearly impossible to determine which caused the discharge. Therefore, instead of establishing liability separately to the Dischargers, a single liability should be assessed to the Dischargers in the amount of \$262,500. Regional Board staff agrees with the reasoning, and the Executive Officer scheduled the settlement offer to be heard by the Regional Board. On May 25, 2005, the Regional Board inspected the Morro Hills site and found no serious violations of the State Board's Construction Storm Water Permit.

Dischargers' settlement offer has the following positive aspects:

1. Dischargers waive right to petition the State Board on this matter;
2. Dischargers took immediate action to achieve compliance with the Construction Storm Water Permit;
3. The settlement of \$262,500 is a sufficient amount of liability to deter the Dischargers, and other dischargers from non-compliance;
4. The settlement is consistent with the State Board's Water Quality Enforcement Policy;
5. The City of Oceanside worked with the Regional Board on this enforcement action; and
6. Settlement allows the Regional Board to redirect formal enforcement resources to other high priority violations.

KEY ISSUES: None.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2005-0166
3. North County Times Notice
4. ACL Complaint R9-2005-0107
5. ACL Complaint R9-2005-0108
6. Settlement Offer

RECOMMENDATION(S): Adopt tentative Order No. R9-2005-0166.